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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY  
and  
CENTER FOR ENVIRONMENTAL  
HEALTH

Plaintiffs,

vs.

ANDREW R. WHEELER, in his official  
capacity as Administrator of the United States  
Environmental Protection Agency,

Defendant.

Civ. No.

**COMPLAINT**

(Clean Air Act, 42 U.S.C. §§ 7401 *et seq*)

## INTRODUCTION

1. This action is brought under the federal Clean Air Act, 42 U.S.C. §§ 7401 – 7671q, and seeks to compel the Administrator of the United States Environmental Protection Agency (“EPA”) to carry out his outstanding legal obligations to: (1) promulgate a Federal Implementation Plan (“FIP”) addressing a permitting rule for the Mendocino County Air Quality Management District; (2) take final action on 51 state implementation plan elements submitted by the state of California to implement the 2008 8-hour ozone NAAQS for the Eastern Kern (Kern County) nonattainment area; (3) take final action on the Rule No. 428 (New Source Review Requirements for New and Modified Major Sources in Federally Designated Nonattainment Areas) submitted by the state of California to meet the moderate nonattainment requirements under the 2008 8-hour ozone NAAQS for the Northern Sierra Air Quality Management District; and (4) take final action on 7 state implementation plan elements submitted by the state of Colorado to implement the 2008 8-hour ozone NAAQS for the Denver Metro/North Front Range nonattainment area.

2. Ozone air pollution has profound effects on human health. EPA has found that short and long-term exposure to ozone can result in “enhanced respiratory symptoms in asthmatic individuals, school absences, and premature mortality.” 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008). Individuals particularly sensitive to ozone exposure include older adults, people with heart and lung disease, people who work and exercise outdoors, and children. *See* 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013); 62 Fed. Reg. 38,653, 38,668 (July 18, 1997); 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008).

3. EPA also found that some plant species are especially sensitive to ozone pollution, which stunts growth, interferes with photosynthesis, and increases susceptibility to disease, weather, and insects. These negative impacts have a damaging effect on the surrounding ecosystem, including loss of biodiversity, habitat degradation, and water, nutrient, and carbon cycling. Studies link long-term ozone exposure to adverse health effects in birds such as inflammation, ruptured blood vessels, lung failure, decreases in egg production and hatching,

brood abandonment, and reduced growth.<sup>1</sup>

4. Accordingly, Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and CENTER FOR ENVIRONMENTAL HEALTH bring this action against Defendant ANDREW R. WHEELER, in his official capacity as Administrator for the EPA, to compel him to perform his mandatory duties to ensure health and public welfare protections promised under the Clean Air Act.

### JURISDICTION

5. This case is a Clean Air Act “citizen suit.” Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a) (Clean Air Act citizen suits).

6. An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 of 1146, and does not involve the Tariff Act of 1930.

7. Thus, this Court has jurisdiction to order declaratory relief under 28 U.S.C. §§ 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

### NOTICE

8. Plaintiffs mailed by certified mail, return receipt requested, written notice of intent to sue regarding Claims 1 - 3 of this Complaint. EPA received the notice letter regarding these claims in this Complaint on or about November 21, 2019.

9. Plaintiffs subsequently mailed by certified mail, return receipt requested, written notice of intent to sue regarding Claim 2 of this Complaint. EPA received the notice letter regarding this violation in this Complaint on or about January 30, 2020.

10. Plaintiffs subsequently mailed by certified mail, return receipt requested, written

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<sup>1</sup> Olivia V. Sanderfoot and Tracey Holloway, *Air Pollution Impacts on Avian Species via Inhalation Exposure and Associated Outcomes*, 12 Environ. Res. Lett. 083002 (2017), available at <https://iopscience.iop.org/article/10.1088/1748-9326/aa8051/pdf>.

1 notice of intent to sue regarding Claim 1 - 3 of this Complaint. EPA received the notice letter  
2 regarding these violations in this Complaint on or about February 24, 2020.

3 11. Plaintiffs subsequently mailed by certified mail, return receipt requested, written  
4 notice of intent to sue regarding Claim 4 (2008 8-hour ozone NAAQS for Denver Metro/North  
5 Front Range nonattainment area, Colorado) of this Complaint. EPA received the notice letter  
6 regarding this violation in this complaint on or about April 2, 2020.

7 12. More than sixty days have passed since EPA received the notice letters discussed  
8 above. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and  
9 actual controversy exists between the parties.

### 10 **VENUE**

11 13. Defendant EPA resides in this judicial district. This civil action is brought against  
12 an officer of the United States acting in his official capacity and a substantial part of the events  
13 or omissions giving rise to the claims in this case occurred in the Northern District of California.  
14 Some of the claims in this Complaint concerns EPA's failure to perform mandatory duties with  
15 regard to California. EPA Region 9, which is responsible for California, is headquartered in San  
16 Francisco. Thus, events and omissions at issue in this action occurred at EPA's Region 9  
17 headquarters in San Francisco. Additionally, Plaintiff CENTER FOR ENVIRONMENTAL  
18 HEALTH is headquartered in Oakland. Accordingly, venue is proper in this Court pursuant to 28  
19 U.S.C. § 1391(e).

### 20 **INTRADISTRICT ASSIGNMENT**

21 14. A substantial part of the events and omissions giving rise to the claims in this case  
22 occurred in the County of San Francisco. Accordingly, assignment to the Oakland or San  
23 Francisco Division is proper pursuant to Civil L.R. 3-2(c) and (d).

### 24 **PARTIES**

25 15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
26 corporation incorporated in California. The Center for Biological Diversity's mission is to ensure  
27 the preservation, protection, and restoration of biodiversity, native species, ecosystems, public  
28

lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

16. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland, California based non-profit organization that helps protect the public from toxic chemicals and promotes business products and practices that are safe for public health and the environment. The Center for Environmental Health works in pursuit of a world in which all people live, work, learn and play in health environments.

17. Plaintiffs' members live, work, recreate, travel and engage in activities throughout the areas at issue in this Complaint and will continue to do so on a regular basis. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiffs' members. Pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities and recreational opportunities of the affected area.

18. EPA's failure to timely perform the mandatory duties described herein also adversely affects Plaintiffs, as well as their members, by depriving them of procedural protection, opportunities, and information that they are entitled to under the Clean Air Act. Furthermore, EPA's failure to perform its mandatory duties also creates uncertainty for Plaintiffs' members as to whether they are exposed to excess air pollution.

19. Defendant ANDREW R. WHEELER is sued in his official capacity as the Administrator of the EPA. In that role, EPA has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

20. The above injuries will continue until the Court grants the relief requested herein.

### STATUTORY FRAMEWORK

21. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against air pollution in the United States with a view to assuring the air we breathe through the

1 Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S. Code  
2 Cong. & Admin. News 5356, 5356.

3 22. Commensurate with this goal, Congress authorized the Administrator of the  
4 United States Environmental Protection Agency to establish National Ambient Air Quality  
5 Standards (“NAAQS”) for “criteria pollutants,” which are air pollutants that “cause or contribute  
6 to air pollution which may reasonably be anticipated to endanger public health or welfare.” 42  
7 U.S.C. § 7408(a)(1)(A).

8 23. There are primary and secondary NAAQS. *Id.* § 7409(a)(1)(A). Primary NAAQS  
9 provide for “an adequate margin of safety...to protect the public health,” while secondary  
10 NAAQS “protect the public welfare from any known or anticipated adverse effects associated  
11 with the presence of such air pollutants in the ambient air.” *Id.* § 7409(b)(1)-(2).

12 24. After promulgating a new or revised NAAQS, EPA determines whether  
13 geographic areas are designated nonattainment (areas that do not meet the primary or secondary  
14 NAAQS), attainment (areas that meet the primary or secondary NAAQS), or unclassifiable  
15 (areas that cannot be classified based on available information). *Id.* § 7407(d)(1)(A).

16 25. States are required to submit State Implementation Plans (“SIPs”) and plan  
17 revisions that “provide for the implementation, maintenance, and enforcement” of any NAAQS.  
18 *Id.* § 7410(a)(1).

19 26. Within six months of a state submitting a SIP, EPA must make a completeness  
20 finding. If a determination is not made within six months of submittal, the plan submission is  
21 deemed administratively complete by operation of law. *Id.* § 7410(k)(1)(B).

22 27. EPA is required to take final action to approve, disapprove, or provide a  
23 conditional approval or disapproval within twelve months of a SIP submittal being  
24 administratively complete. *Id.* § 7410(k)(2)-(4).

25 28. Within two years of EPA finding that a state failed to submit a required SIP or  
26 disapproval of a SIP submittal, EPA must promulgate a Federal Implementation Plan. *Id.* §  
27 7410(c).

## FACTUAL BACKGROUND

### A. Mendocino County Air Quality Management District: 2008 8-hour Ozone NAAQS

29. On July 3, 2017, EPA published a final rule, issuing a limited approval and limited disapproval of Mendocino County Air Quality Management District's revised Rule 1-220 for preconstruction review and permitting under the 2008 8-hour ozone NAAQS. 82 Fed. Reg. 30, 770 (July 3, 2017).

30. EPA issued a limited disapproval because Mendocino County Air Quality Management District's Rule 1-220 conflicted with the Clean Air Act's requirement for prevention of significant deterioration of air quality in areas designated "attainment" or "unclassifiable" for pollutants regulated under the National Ambient Air Quality Standards.

31. EPA's limited disapproval of Rule 1-220 became effective on August 2, 2017. *Id.*

32. As a result, EPA was required to promulgate a FIP no later than August 2, 2019, unless the state of California submits and EPA approves a revised SIP, correcting the deficiencies, before it is required to promulgate a new source review FIP. 42 U.S.C. §7410(c)(1).

33. To date, EPA has neither approved a revised SIP nor published a FIP addressing the disapproval of revised Rule 1-220 for the Mendocino County Air Quality Management District.

### B. Eastern Kern (Kern County), California: 2008 8-hour Ozone NAAQS

34. On December 11, 2017, EPA issued a finding of failure to submit a SIP addressing most of the requirements for the 2008 ozone NAAQS for the Eastern Kern (Kern County) nonattainment area ("Eastern Kern nonattainment area"). 82 Fed. Reg. 58, 118 (Dec. 11, 2017).

35. The state of California subsequently submitted SIPs addressing 51 nonattainment SIP elements for the 2008 ozone NAAQS for the Eastern Kern nonattainment area.

36. EPA has a mandatory duty to take final action on SIP submittals within twelve months of those SIP submittals becoming administratively complete. 42 U.S.C. § 7410(k)(2)-(4).

37. It has been more than 12 months since the nonattainment SIP elements in Table 1 were deemed or found administratively complete.

38. To date, EPA has not taken final action to approve, disapprove, or conditionally approve these nonattainment SIP elements for the Eastern Kern nonattainment area listed in Table 1 below.

**TABLE 1**

<b>Element</b>	<b>SIP Requirement</b>	<b>Submittal Date</b>	<b>Completion Date (no later than)</b>	<b>Final Action Due Date</b>
1	Contingency Measures Volatile Organic Compounds (“VOC”) and Nitrogen Oxides (“NOx”)	10/25/17	4/25/2018	4/25/2019
2	Emission Inventory	10/25/2017	4/25/2018	4/25/2019
3	Emission Statement	10/25/2017	4/25/2018	4/25/2019
4	Nonattainment NSR rules - Serious	5/23/2018	8/28/2018	8/28/2019
5	Ozone Attainment Demonstration	10/25/2017	4/25/2018	4/25/2019
6	Available Control Technology (“RACT”) Non-Control Technique Guidelines (“CTG”) Volatile Organic Compound (“VOC”) for Major Sources	8/9/2017	2/9/2018	2/9/2019
7	RACT VOC CTG Aerospace	8/9/2017	2/9/2018	2/9/2019
8	RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008)	8/9/2017	2/9/2018	2/9/2019



9	RACT VOC CTG Bulk Gasoline Plants	8/9/2017	2/9/2018	2/9/2019
10	RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants	8/9/2017	2/9/2018	2/9/2019
11	RACT VOC CTG Factory Surface Coating of Flat Wood Paneling	8/9/2017	2/9/2018	2/9/2019
12	RACT VOC CTG Fiberglass Boat Manufacturing Materials (2008)	8/9/2017	2/9/2018	2/9/2019
13	RACT VOC CTG Flat Wood Paneling Coatings (2006)	8/9/2017	2/9/2018	2/9/2019
14	RACT VOC CTG Flexible Packaging Printing Materials (2006)	8/9/2017	2/9/2018	2/9/2019
15	RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment	8/9/2017	2/9/2018	2/9/2019
16	RACT VOC CTG Graphic Arts - Rotogravure and Flexography	8/9/2017	2/9/2018	2/9/2019
17	RACT VOC CTG Industrial Cleaning Solvents (2006)	8/9/2017	2/9/2018	2/9/2019

18	RACT VOC CTG Large Appliance Coatings (2007)	8/9/2017	2/9/2018	2/9/2019
19	RACT VOC CTG Large Petroleum Dry Cleaners	8/9/2017	2/9/2018	2/9/2019
20	RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems	8/9/2017	2/9/2018	2/9/2019
21	RACT VOC CTG Leaks from Petroleum Refinery Equipment	8/9/2017	2/9/2018	2/9/2019
22	RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006)	8/9/2017	2/9/2018	2/9/2019
23	RACT VOC CTG Manufacture of High- Density Polyethylene, Polypropylene, and Polystyrene Resins	8/9/2017	2/9/2018	2/9/2019
24	RACT VOC CTG Manufacture of Pneumatic Rubber Tires	8/9/2017	2/9/2018	2/9/2019
25	RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products	8/9/2017	2/9/2018	2/9/2019
26	RACT VOC CTG Metal Furniture Coatings (2007)	8/9/2017	2/9/2018	2/9/2019

27	RACT VOC CTG Miscellaneous Industrial Adhesives (2008)	8/9/2017	2/9/2018	2/9/2019
28	RACT VOC CTG Miscellaneous Metal Products Coatings (2008)	8/9/2017	2/9/2018	2/9/2019
29	RACT VOC CTG Paper, Film, and Foil Coatings (2007)	8/9/2017	2/9/2018	2/9/2019
30	RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks	8/9/2017	2/9/2018	2/9/2019
31	RACT VOC CTG Plastic Parts Coatings (2008)	8/9/2017	2/9/2018	2/9/2019
32	RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds	8/9/2017	2/9/2018	2/9/2019
33	RACT VOC CTG SOCMI Air Oxidation Processes	8/9/2017	2/9/2018	2/9/2019
34	RACT VOC CTG SOCMI Distillation and Reactor Processes	8/9/2017	2/9/2018	2/9/2019
35	RACT VOC CTG Shipbuilding/repair	8/9/2017	2/9/2018	2/9/2019
36	RACT VOC CTG Solvent Metal Cleaning	8/9/2017	2/9/2018	2/9/2019

37	RACT VOC CTG Stage I Vapor Control Systems - Gasoline Service Stations	8/9/2017	2/9/2018	2/9/2019
38	RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks	8/9/2017	2/9/2018	2/9/2019
39	RACT VOC CTG Surface Coating for Insulation of Magnet Wire	8/9/2017	2/9/2018	2/9/2019
40	RACT VOC CTG Surface Coating of Automobiles and Light-Duty Trucks	8/9/2017	2/9/2018	2/9/2019
41	RACT VOC CTG Surface Coating of Cans	8/9/2017	2/9/2018	2/9/2019
42	RACT VOC CTG Surface Coating of Coils	8/9/2017	2/9/2018	2/9/2019
43	RACT VOC CTG Surface Coating of Fabrics	8/9/2017	2/9/2018	2/9/2019
44	RACT VOC CTG Surface Coating of Large Appliances	8/9/2017	2/9/2018	2/9/2019
45	RACT VOC CTG Surface Coating of Metal Furniture	8/9/2017	2/9/2018	2/9/2019
46	RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products	8/9/2017	2/9/2018	2/9/2019
47	RACT VOC CTG Surface Coating of Paper	8/9/2017	2/9/2018	2/9/2019
48	RACT VOC CTG Tank Truck Gasoline	8/9/2017	2/9/2018	2/9/2019

	Loading Terminals			
49	RACT VOC CTG Use of Cutback Asphalt	8/9/2017	2/9/2018	2/9/2019
50	RACT VOC CTG Wood Furniture	8/9/2017	2/9/2018	2/9/2019
51	Reasonable Further Progress (“RFP”) Volatile Organic Compound (“VOC”) and Nitrogen Oxide (“NOx”) Moderate	10/25/2017	04/25/2018	04/25/2019

**C. Northern Sierra Air Quality Management District, California: 2008 8-hour Ozone NAAQS**

39. On September 6, 2016, the state of California submitted a SIP revising Northern Sierra Air Quality Management District’s New Source Review regulations to meet the moderate nonattainment requirements under the 2008 8-hour ozone NAAQS.

40. EPA determined that the state of California’s submission of Rule No. 428 (New Source Review Requirements for New and Modified Sources in Federally Designated Nonattainment Areas) met the minimum criteria for completeness on September 28, 2016. In any event, the Rule No. 428 submittal would have been deemed complete by no later than March 6, 2017.

41. EPA has a mandatory duty to take final action on SIP submittals within twelve months of those SIP submittals becoming administratively complete. 42 U.S.C. § 7410(k)(2)-(4).

42. On February 19, 2020, the California Air Resource Commission submitted a revised Rule 428 to EPA for approval into the California SIP, and claimed to “withdraw” its September 6, 2016 submittal of the prior version of the rule. The February 19, 2020 update of the September 6, 2016 submittal does not change the due date for EPA’s final action.

43. To date, EPA has not taken final action to approve, disapprove, or conditionally approve this SIP submittal.

**D. Denver Metro/North Front Range nonattainment area, Colorado: 2008 8-hour**

**Ozone NAAQS**

44. On July 3, 2018, EPA issued a final rule regarding SIP revisions for the 2008 ozone NAAQS for the Denver Metro/North Front Range nonattainment area. 83 Fed. Reg. 31, 068 (July 3, 2018). The final rule approved the majority of the SIP submittal except for Regulation No. 7, Section XVI. D-XIX. *Id.* At 31, 070-71.

45. The state of Colorado subsequently submitted SIPs addressing 7 nonattainment SIP elements for the 2008 Ozone NAAQS for the Denver Metro/North Front Range nonattainment area.

46. It has been more than 12 months since the nonattainment SIP elements in Table 2 were deemed or found administratively complete.

47. To date, EPA has not taken final action to approve, disapprove, or conditionally approve these nonattainment SIP elements for the Denver Metro/North Front Range nonattainment area listed in Table 2 below.

**TABLE 2**

SIP Elements	Submittal Date	Completion Date (no later than)	Final Action Due Date
Reasonably Achievable Control Technology ("RACT") Volatile Organic Compound ("VOC") Control Technique Guideline ("CTG") Metal Furniture Coatings (2007)	5/31/2017	11/30/2017	11/30/2018

1	RACT VOC			
2	CTG			
3	Miscellaneous	5/31/2017	11/30/2017	11/30/2018
4	Metal Products			
5	Coatings (2008)			
6	RACT VOC			
7	CTG Wood			
8	Furniture	5/31/2017	11/30/2017	11/30/2018
9	Manufacturing			
10	Operations			
11	(1996)			
12	RACT VOC			
13	CTG Industrial			
14	Cleaning	5/31/2017	11/30/2017	11/30/2018
15	Solvents (2006)			
16	RACT VOC			
17	CTG Aerospace			
18	(1997)	5/31/2017	11/30/2017	11/30/2018
19	Reg. No. 7,			
20	Section X (Use			
21	of Cleaning	5/31/2017	11/30/2017	11/30/2018
22	Solvents)			
23	Reg. No. 7,			
24	Section XIX			
25	(Control of			
26	Emissions from			
27	Specific Major	5/31/2017	11/30/2017	11/30/2018
28	Sources of VOC			
	and/or NOx in			
	the 8-Hour			
	Ozone Control			
	Area)			

### CLAIMS FOR RELIEF

#### FIRST CLAIM

**(Failure to promulgate a FIP for part of Mendocino County's New Source Review Program)**

48. Plaintiffs incorporate by reference all paragraphs listed above.

49. It has been more than two years since the effective date of EPA's final rule, issuing a limited disapproval of Mendocino County Air Quality Management District's revised Rule 1-220 for preconstruction review and permitting. 82 Fed. Reg. 30, 770.

50. EPA has not promulgated a FIP to address the basis for its disapproval of revised Rule 1-220 and has not approved a SIP addressing the basis for that disapproval.

51. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(C)(1) with regard to revised Rule 1-220.

## SECOND CLAIM

### **(Failure to take final action on the 2008 8-hour ozone SIP submittals for the Kern County nonattainment area, California)**

52. Plaintiffs incorporate by reference all paragraphs listed above.

53. It has been more than twelve months since the 2008 8-hour ozone NAAQS SIP elements for the Kern County, California 2008 ozone NAAQS nonattainment area listed in Table 1 were administratively complete.

54. EPA has not taken final action to approve, disapprove, or conditionally approve the 2008 8-hour ozone NAAQS SIP elements for the Kern County, California 2008 ozone NAAQS nonattainment area listed in Table 1.

55. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2)-(4) to take final action on the 2008 8-hour ozone NAAQS SIP elements for the Kern County, California 2008 ozone NAAQS nonattainment area listed in Table 1.

## THIRD CLAIM

### **(Failure to take final action on the 2008 8-hour ozone SIP submittals for the Northern Sierra Air Quality Management District, California)**

56. Plaintiffs incorporate by reference all paragraphs listed above.

57. It has been more than twelve months since the Rule No. 428 SIP submittal for the Northern Sierra Air Quality Management District's New Source Review regulations to meet the moderate nonattainment requirements under the 2008 ozone NAAQS.



58. EPA has not taken final action to approve, disapprove, or conditionally approve the Rule No. 428 SIP submittal.

59. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2)-(4) to take final action on the Rule No. 428 SIP submittal for the Northern Sierra Air Quality Management District.

#### **FOURTH CLAIM**

##### **(Failure to take final action on the 2008 8-hour ozone SIP submittals for the Denver Metro/North Front Range nonattainment area, Colorado)**

60. Plaintiffs incorporate by reference all paragraphs listed above.

61. It has been more than twelve months since the 2008 8-hour ozone NAAQS SIP elements for the Denver Metro/North Front Range nonattainment area listed in Table 2 were administratively complete.

62. EPA has not taken final action to approve, disapprove, or conditionally approve the 2008 8-hour ozone NAAQS SIP elements for the Denver Metro/North Front Range nonattainment area listed in Table 2.

63. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2)-(4) to take final action on the 2008 8-hour ozone NAAQS SIP elements for the Denver Metro/North Front Range nonattainment area listed in Table 2.

#### **REQUEST FOR RELIEF**

Wherefore, Plaintiffs respectfully request that the Court:

64. Declare that EPA is in violation of the Clean Air Act with regard to its nondiscretionary duty to perform each mandatory duty listed above;

65. Issue a mandatory injunction requiring EPA to perform its mandatory duties by certain dates;

66. Retain jurisdiction of this matter for purposes of enforcing the Court's order;

67. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees; and

68. Grant such other relief as the Court deems just and proper.

1 Dated: August 27, 2020

2  
3 Respectfully submitted,

4 /s/Lalli Venkatakrishnan

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